

10-31-05

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EXPRESS MAIL NO.: EV 654 850 656 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Schmidmaier *et al.* Confirmation No.: 8071
Serial No.: 09/801,752 Art Unit: 1615
Filed: March 9, 2001 Examiner: SHEIKH, Humera N.
For: BIOLOGICALLY ACTIVE Attorney Docket No.: 8932-148-999
IMPLANTS (CAM No.: 232198-999126)

**PETITION UNDER 37 C.F.R. § 1.10(c) TO ACCORD U.S.P.S.
DEPOSIT DATE AS FILING DATE OF ISSUE FEE TRANSMITTAL**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

On September 14, 2005, in accordance with the Rules of Practice for filing correspondence by "Express Mail" under 37 C.F.R. § 1.10(a), Applicants deposited an Issue Fee Transmittal (PTOL-85) and related documents (hereinafter, "deposited correspondence") with the United States Postal Service (U.S.P.S.). Applicants used the U.S.P.S. "Express Mail Post Office to Addressee" service and paid sufficient postage therefor. The Express Mail Label No. was EV 475141731 US.

The deposited correspondence, a true copy of which, is attached as Exhibit 1 hereto, consisted of the following:

- 1) a return postcard ("Post Card Receipt"), which on one side had an itemized list of the papers mailed on September 14, 2005 and Express Mail Label No. EV 475141731 US; and
- 2) an Issue Fee Transmittal (PTOL-85).

It has recently come to the attention of Attorneys for Applicants that the United States Patent and Trademark Office ("USPTO") has returned the Post Card Receipt of the deposited correspondence showing a stamped receipt date of September 15, 2005 instead of September 14, 2005. A true copy of the stamped Post Card Receipt is attached hereto as Exhibit 2.

As a result, Applicants hereby petition the Commissioner under 37 C.F.R. § 1.10(c) to correct the filing date of the deposited correspondence and to accord the correct date of filing of the Issue Fee Transmittal in the USPTO as the U.S.P.S. deposit date of September 14, 2005. The facts in support of this petition are provided below.

1. This petition is being filed promptly in accordance with 37 C.F.R. § 1.10(c)(1)

Attorneys for Applicants recently became aware that the USPTO had accorded in error a receipt date of September 15, 2005 of the deposited correspondence. Upon this discovery, Attorneys for Applicants telephoned the USPTO on October 25, 2005 to determine whether there was any record of the correspondence being delivered. According to a customer representative at the Office of Publications, the USPTO computer database shows that the deposited correspondence was received on September 15, 2005.

This petition is therefore being filed promptly after Attorneys for Applicants became aware that the USPTO had erroneously accorded the filing date of September 15, 2005, instead of September 14, 2005, in accordance with 37 C.F.R. § 1.10(c)(1).

2. The Express Mail Mailing Label No. EV 475141731 US. was placed on the deposited correspondence in accordance with 37 C.F.R. § 1.10(c)(2)

As demonstrated by the true copy of the deposited correspondence attached as Exhibit 1, the first page of the Issue Fee Transmittal and the Post Card Receipt itemizing the correspondence contents both included the Express Mail Label No. EV 475141731 US. As a result, the Express Mail Label No. EV 475141731 US was placed on the deposited correspondence prior to it being deposited with the U.S.P.S. in accordance with 37 C.F.R. § 1.10(c)(2).

3. The necessary supporting documentation is attached to this petition in accordance with 37 C.F.R. § 1.10(c)(3)

As indicated above, a true copy of the deposited correspondence is attached as Exhibit 1 hereto and demonstrates that the deposited correspondence showed the relevant Express Mail Label No. EV 475141731 US. In addition, in accordance with 37 C.F.R. § 1.10(c)(3), a true copy of the Post Office to Addressee Express Mail Mailing Label No. EV 475141731 US is attached hereto as Exhibit 3. In the Date In box, the Express Mail mailing label clearly

shows the “date in” as being the requested filing date of September 14, 2005. The Express Mail mailing label also bears a U.S.P.S. stamp verifying September 14, 2005 as the date of deposit with the U.S.P.S. The mailing label additionally indicates that the sender is Attorneys for Applicants, Jones Day, 222 East 41st Street, New York, NY 10017; that the recipient is the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450; and that sufficient postage of \$15.65 was paid.

Furthermore, a true copy of the Express Mail Certification dated September 14, 2005 and signed by an employee of Attorneys for Applicants, Raphael Solorzano, is attached hereto as Exhibit 4. The Express Mail Certification indicates that the deposited correspondence corresponding to the attorney names “B. Rothery, L. Azrin, A. Chen” and attorney docket number “8932-148-999” in the 1st table entry of the Express Mail Certification was inserted into the Express Mail package corresponding to the Express Mail Label No. EV 475141731 US and that this package was deposited with the U.S.P.S. using “Express Mail Post Office to Addressee” service on September 14, 2005. Information regarding attorney name and attorney docket number for other correspondences not related to this application has been redacted to preserve the confidentiality of that information in the remaining table entries of the Express Mail Certification.

Accordingly, Applicants respectfully submit that all of the requirements of 37 C.F.R. §§ 1.10(a) and (c) have been fully met and complied with, and that therefore the deposited correspondence in Exhibit 1 – including the Issue Fee Transmittal contained therein – should be accorded a filing date of September 14, 2005, the date of deposit of that correspondence as Express Mail with the U.S.P.S.

It is believed that no fee is required in connection with this petition. However, should the Patent Office determine otherwise, please charge any necessary fee to Jones Day Deposit Account no. 50-3013.

Date: October 27, 2005

Respectfully submitted,

Brian M. Rothery *by:*
John B. Azrin *Reg. No. 44,516* 35,340
Brian M. Rothery (Reg. No.)

Jones Day
222 East 41st Street
New York, NY 10017
(212) 326-9028



Express Mail No. EV 475 141 731 US

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Date Mailed: September 14, 2005

Application No.: 09/801,752 Filed: March 9, 2001

Inventor(s): Schmidmaier et al.

For: BIOLOGICALLY ACTIVE IMPLANTS

The stamp of the Patent Office hereon may be taken as an acknowledgment of the date stamped of the following:

(X) Issue Fee Transmittal (in duplicate).

File No.: 8932-148-999 Sender: BMR/LBA/AWC

CAM No.: 232198-999126

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FI



Express Mail No.: EV 475 141 731 US

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or **EX** (703) 746-4000

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

51832 7590 06/14/2005

JONES DAY
222 EAST 41ST STREET
NEW YORK, NY 10017-6702

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (703) 746-4000, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,752	03/09/2001	Gerhard Schmidmaier	8932-148	8071

TITLE OF INVENTION: BIOLOGICALLY ACTIVE IMPLANTS

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1400	\$300	\$1700	09/14/2005

EXAMINER	ART UNIT	CLASS-SUBCLASS
SHEIKH, HUMERA N	1615	424-422000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 Jones Day

2
3

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☒ Corporation or other private group entity ☐ Government

4a. The following fee(s) are enclosed:

- ☒ Issue Fee
- ☒ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☒ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number 50-3013 (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.
- ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above. NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature Brian M. Rothery by Ann W. Chan
Typed or printed name Brian M. Rothery REG. NO. 49,013

Date September 14, 2005
Registration No. 35,340

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.



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Express Mail No. EV 475 141 731 US

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EV 475141731 US



**EXPRESS
MAIL**

Customer Copy
Label 11-F June 2002

UNITED STATES POSTAL SERVICE®

Post Office To Addressee

ORIGIN (POSTAL USE ONLY)

PO ZIP Code 10017	Day of Delivery <input type="checkbox"/> Next <input checked="" type="checkbox"/> Second <input type="checkbox"/> Third	Flat Rate Envelope <input checked="" type="checkbox"/> 13-65
Date In Mo. 09 Day 14 Year 05	<input type="checkbox"/> 12 Noon <input checked="" type="checkbox"/> 3 PM	Postage \$ 13.65
Time In <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM 8:01	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee \$
Weight lbs. 9 ozs.	Int'l Alpha Country Code	COD Fee Insurance Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials	Total Postage & Fees \$ 13.65

DELIVERY (POSTAL USE ONLY)

Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Date	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance to void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.		
<input type="checkbox"/> NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday		
Customer Signature		

CUSTOMER USE ONLY

METHOD OF PAYMENT:

Express Mail Corporate Acct. No.

Federal Agency Acct. No. or
Postal Service Acct. No.

FROM: (PLEASE PRINT)

212 326 3789

PHONE ()

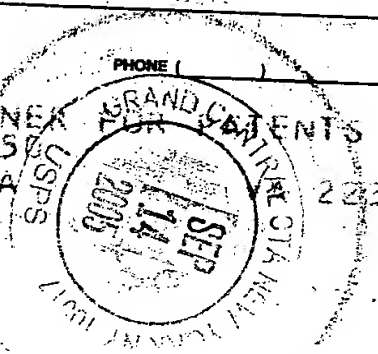
JONES DAY
222 E 41ST ST FL 2
MAIL ROOM
NEW YORK

NY 10017-0727

TO: (PLEASE PRINT)

PHONE ()

COMMISSIONER
PO BOX 1450
ALEXANDRIA
22313-1450

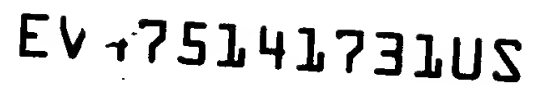


PRESS HARD

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FOR PICKUP OR TRACKING CALL 1-800-222-1811 www.usps.com





THE EXPRESS MAIL NUMBER OF THE DAY IS: EV475141731US

EXPRESS MAIL CERTIFICATION

Signature: Rafael Salazar Date: 9-14-05

[illegible]